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Certification of
Metlakatla Police Officers

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You have inquired whether members of the Metlakatla Police Department may be certified by the Alaska Police Standards Council pursuant to its powers set out in AS 18.65.130 -- 18.65.900. The issue arises because of Metlakatla's special status in Alaska as a federally-recognized Indian tribe occupying the Annette Islands Reservation.

Our short answer is that we believe that the police officers of the Metlakatla Police Department may be certified by the APSC and, as a corollary to this, may be denied certification or decertified if they fail to meet the APSC's certification standards.

Discussion

It is our understanding that the Metlakatla Indian Community desires to have its police officers certified by the Alaska Police Standards Council ("APSC"). Metlakatla is unique in Alaska in that it is a federally-recognized Indian tribe, occupying reservation land. In 1891, Congress set aside the Annette Island Reserve (Act of March 3, 1891, ch. 561, § 15, 26 Stat. 1101, 48 U.S.C. § 358) as a reservation "for the use of the Metlakatla Indians . . . and such other Alaska natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior." 26 Stat. 1101, 48 U.S.C. § 358.¹ In 1944, the Metlakatla Indian Community organized under § 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476. Its constitution and by-laws established a local government with provisions for a twelve-member council and a judiciary. At the same time, the community adopted a corporate charter under § 17 of the Act, 25 U.S.C. 477. These documents established a local government system. Thus, Metlakatla is a political subdivision within Alaska that has been created by federal -- rather than state -- law.

¹ The Alaska Native Claims Settlement Act, 85 Stat. 688, 43 U.S.C. §§ 1601-27, specifically excluded the Annette Island Reserve from the Act, 43 U.S.C. § 1618(a), although it revoked other Alaska Indian reserves. See *Atkinson v. Haldane*, 569 P.2d 151, 154 (Alaska 1977) (Metlakatla sovereign immunity protects it from a wrongful death suit).

AS 18.65.220 empowers the APSC to “establish minimum standards for employment as a police officer, probation or parole officer, and correctional officer in a permanent or probationary position and certify persons to be qualified as police officers, probation or parole officers, and correctional officers under AS 18.65.130 -- 18.65.290.”² A “police officer” is defined in AS 18.65.290(5) to mean “a full-time employee of the state or a local police department with the authority to arrest and issue citations” The members of the Metlakatla Police Department are full-time employees “with the authority to arrest and issue citations.” Accordingly, the APSC is empowered to certify the officers of the Metlakatla Police Department if the department qualifies as a “local police department.”

The statutes governing the APSC do not specify what constitutes a “police department.” The term, however, has been defined by the APSC in its regulations. The definition promulgated by the APSC is: “a civil force of police officers organized by the state or a political subdivision of the state whose basic purpose and function is to maintain peace and order and to prevent and investigate criminal offenses.” 13 AAC 85.900(13) (emphasis added).

The Metlakatla Police Department is a civil force of police officers whose basic purpose and function is to maintain peace and order and to prevent and investigate criminal offenses. Nonetheless, the regulation’s definition of “police department” also requires that the department be organized “by the state or a political subdivision of the state.” Although the Metlakatla Indian Community is a political subdivision located within the state, it is not a political subdivision of the state because it was not created under state law. Therefore, the Metlakatla Police Department does not fall within the literal language of 13 AAC 85.900(13)’s definition of “police department.” This means that, under a strict interpretation of the regulation, the employees of the Metlakatla Police Department are not police officers entitled to certification by the APSC.

Regulations, however, are required to be “consistent with the statute and reasonably necessary to carry out the purpose of the statute.” AS 44.62.030. Accordingly, 13 AAC 85.900(13) should be interpreted, if possible, to fulfil the purposes of the APSC Act. AS 18.65.130, the first statute of the Act, reads:

The administration of criminal justice affects the health, safety and welfare of the people of this state, and requires education and training of a professional quality. It is a primary public interest that applicants meet minimum standards for employment as police officers, probation and parole officers, and correctional officers, and that criminal justice education and training be made available to police officers, probation and parole officers, and correctional officers serving in a probationary capacity and police officers, probation and parole officers, and correctional officers already in regular service.

Thus, the state’s purpose in providing for the certification of police officers is to ensure that they

² Elsewhere, the statutes specify that the APSC “may deny or revoke the certification of a police officer who does not meet the standards adopted” by the council. AS 18.65.250(c).

meet minimum standards for employment so as to promote the health, safety, and welfare of the people of this state.

Nothing in the provisions of AS 18.65.130 or AS 18.65.290(5) requires the APSC to interpret the phrase "local police department" to mean only police departments of the state or of its political subdivisions. To the contrary, the statutes' beneficial objective of providing uniform minimum standards for police officers statewide is best achieved if "local police departments" is construed to mean police departments of political subdivisions within the state, whether or not they are subdivisions of the state. This is particularly true when those departments enforce state laws, as does the Metlakatla Police Department. *See* P.L. 280; 18 U.S.C.S. § 1162 (1979).

Under these circumstances, we believe the Alaska courts would rule that 13 AAC 85.900(13) must be interpreted as defining "police department" to mean "a civil force of police officers organized by the state or a political subdivision within the state whose basic purpose and function is to maintain peace and order and to prevent and investigate criminal offenses." Under this interpretation of the regulation, the officers of the Metlakatla Police Department are eligible for and required to be certified by the APSC.³

If you have any further questions regarding this matter, please do not hesitate to contact me.

³ As previously indicated, it is our understanding that Metlakatla desires to have its police officers certified by the APSC. It is remotely possible that an individual officer or the Metlakatla Indian Community might later adopt a contrary position and successfully assert sovereign immunity as a bar to a decertification proceeding or as a bar to a directive by the APSC to terminate the employment of an uncertified officer after the expiration of a probationary period. In that unlikely event, we believe that any certifications previously issued by the APSC to members of the Metlakatla Police Department would become invalid *nunc pro tunc* as a matter of law and could be rescinded by the APSC.

Although it has not happened yet, it is conceivable that the State of Alaska may be sued some day for its alleged negligence in certifying a police officer who causes harm to a citizen. There was a period of time during which Metlakatla could assert sovereign immunity against such a claim. *See* note 1 *supra*. For any claim arising after September 30, 1990, however, members of the Metlakatla Police Department are deemed to be employees of the Bureau of Indian Affairs. Pub. L. No. 101-512, § 314 (1990). By statute, these claims "shall be deemed to be an action against the United States and will be defended by the Attorney General and be afforded the full protection and coverage of the Federal Tort Claims Act." 25 U.S.C.S. § 450 (1990). Thus, Metlakatla's exposure to liability on tort claims is basically the same as that of any municipality in the state.